

(15) Oscar Espinosa Chepe, sentenced for 20 years;
 (16) Alfredo Felipe Fuentes, sentenced for 26 years;
 (17) Efrén Fernández Fernández, sentenced for 12 years;
 (18) Adolfo Fernández Sainz, sentenced for 15 years;
 (19) Jose Daniel Ferrer García, sentenced for 25 years;
 (20) Luis Enrique Ferrer García, sentenced for 28 years;
 (21) Orlando Fundora Álvarez, sentenced for 20 years;
 (22) Prospero Gainza Aguero, sentenced for 25 years;
 (23) Miguel Galban Gutierrez, sentenced for 26 years;
 (24) Julio Cesar Galvez Rodriguez, sentenced for 15 years;
 (25) Jose Luis Garcia Paneque, sentenced for 24 years;
 (26) Edel Jose Garcia Diaz, sentenced for 16 years;
 (27) Ricardo Gonzalez Alfonso, sentenced for 20 years;
 (28) Diosdado Gonzalez Marrero, sentenced for 20 years;
 (29) Lester Gonzalez Penton, sentenced for 20 years;
 (30) Alejandro Gonzalez Raga, sentenced for 14 years;
 (31) Jorge Luis Gonzalez Tanquero, sentenced for 20 years;
 (32) Leonel Grave de Peralta Almenares, sentenced for 20 years;
 (33) Ivan Hernandez Carrillo, sentenced for 25 years;
 (34) Normando Hernandez Gonzalez, sentenced for 25 years;
 (35) Juan Carlos Herrera Acosta, sentenced for 20 years;
 (36) Regis Iglesias Ramirez, sentenced for 18 years;
 (37) Jose Ubaldo Izquierdo Hernandez, sentenced for 16 years;
 (38) Reinaldo Labrada Pena, sentenced for 6 years;
 (39) Nelson Alberto Aguiar Ramirez, sentenced for 13 years;
 (40) Marcelo Lopez Banobre, sentenced for 15 years;
 (41) Jose Miguel Martinez Hernandez, sentenced for 13 years;
 (42) Hector Maseda Gutierrez, sentenced for 20 years;
 (43) Mario Enrique Mayo Hernandez, sentenced for 20 years;
 (44) Dr. Luis Milan Fernandez, sentenced for 13 years;
 (45) Nelson Moline Espino, sentenced for 20 years;
 (46) Angel Juan Moya Acosta, sentenced for 20 years;
 (47) Jesus Mustafa Felipe, sentenced for 25 years;
 (48) Felix Navarro Rodriguez, sentenced for 25 years;
 (49) Jorge Olivera Castillo, sentenced for 18 years;
 (50) Pablo Pacheco Avila, sentenced for 20 years;
 (51) Hector Palacios Ruiz, sentenced for 25 years;
 (52) Arturo Perez de Alejo Rodriguez, sentenced for 20 years;
 (53) Omar Pernet Hernandez, sentenced for 25 years;
 (54) Horacio Julio Pina Borrego, sentenced for 20 years;
 (55) Fabio Prieto Llorente, sentenced for 20 years;
 (56) Alfredo Pulido Lopez, sentenced for 14 years;
 (57) Jose Gabriel Ramon Castillo, sentenced for 20 years;
 (58) Arnaldo Ramos Lauzerique, sentenced for 18 years;

(59) Blas Giraldo Reyes Rodriguez, sentenced for 25 years;
 (60) Pedro Pablo Alvarez Ramos, sentenced for 25 years;
 (61) Alexis Rodriguez Fernandez, sentenced for 15 years;
 (62) Omar Rodriguez Saludes, sentenced for 27 years;
 (63) Pedro Arguelles Moran, sentenced for 20 years;
 (64) Omar Ruiz Hernandez, sentenced for 18 years;
 (65) Claro Sanchez Albtarriba, sentenced for 15 years;
 (66) Ariel Sigler Amaya, sentenced for 20 years;
 (67) Guido Sigler Amaya, sentenced for 20 years;
 (68) Ricardo Enrique Silva Gual, sentenced for 10 years;
 (69) Fidel Suarez Cruz, sentenced for 20 years;
 (70) Manuel Ubals Gonzalez, sentenced for 20 years;
 (71) Julio Antonio Valdes Guevara, sentenced for 20 years;
 (72) Miguel Valdes Tamayo, sentenced for 15 years;
 (73) Hector Raul Valle Hernandez, sentenced for 12 years;
 (74) Manuel Vazquez Portal, sentenced for 18 years; and
 (75) Antonio Augusto Villarreal Acosta, sentenced for 15 years;

Whereas the imprisoned political opponents of Castro include librarians, journalists, poets, and others who have supported the Varela Project, which seeks to bring free speech, open elections, and democracy to Cuba;

Whereas Fidel Castro seized the opportunity to expand his brutal oppression of the people of Cuba while the attention of the United States and other nations around the world was focused on the war in Iraq;

Whereas the failure to condemn the Government of Cuba's continued political repression of democracy activists will further undermine the opportunity for freedom on the island; and

Whereas the international community missed an opportunity to speak against such brutal repression in a meaningful manner during the 59th Session of the United Nations Commission on Human Rights held in Geneva, Switzerland, from March 17, 2003, through April 23, 2003; Now, therefore, be it

Resolved, That the Senate—

(1) reaffirms—

(A) Senate Resolution 272, 107th Congress, unanimously agreed to June 10, 2002, calling for, among other things, amnesty for all political prisoners in Cuba;

(B) Senate Resolution 97, 108th Congress, unanimously agreed to April 7, 2003, condemning the crackdown on democracy activists in Cuba; and

(C) Senate Resolution 62, 108th Congress, unanimously agreed to June 27, 2003, calling upon the Organization of American States Inter-American Commission on Human Rights, the United Nations High Commissioner for Human Rights, the European Union, and human rights activists throughout the world to take certain actions in regard to the human rights situation in Cuba;

(2) calls on the Government of Cuba to immediately release individuals imprisoned for political purposes;

(3) praises the bravery of those Cubans who, because they practiced free speech and signed the Varela Project petition, have been targeted in this most recent government crackdown;

(4) calls on foreign governments to—

(A) increase the pressure on the Government of Cuba to improve its record on human rights in Cuba; and

(B) invite civil society leaders and democracy activists in Cuba to official events;

(5) calls upon the 60th Session of the United Nations Commission on Human Rights in Geneva from March 15, 2004, to April 23, 2004, to—

(A) condemn Cuba for its human rights abuses; and

(B) demand that inspectors from the International Commission of the Red Cross be allowed to visit and inspect the conditions of prisons to assess for the international community the extent of human rights abuses and the current situation in Cuba; and

(6) urges the President to direct United States Representatives at the 60th Session of the Commission on Human Rights to make the strong condemnation of the human rights situation in Cuba a top priority.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3007. Mr. TALENT submitted an amendment intended to be proposed to amendment SA 2961 submitted by Mr. TALENT and intended to be proposed to the bill H.R. 4, to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes; which was ordered to lie on the table.

SA 3008. Mr. TALENT submitted an amendment intended to be proposed to amendment SA 2960 submitted by Mr. TALENT and intended to be proposed to the bill H.R. 4, supra; which was ordered to lie on the table.

SA 3009. Mr. ROCKEFELLER (for himself and Mr. NELSON, of Nebraska) submitted an amendment intended to be proposed to amendment SA 2947 submitted by Ms. MURKOWSKI and intended to be proposed to the bill H.R. 4, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3007. Mr. TALENT submitted an amendment intended to be proposed to amendment SA 2961 submitted by Mr. TALENT and intended to be proposed to the bill H.R. 4, to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes; which was ordered to lie on the table; as follows:

On page 2 of the amendment, strike lines 4 through 7, and insert the following:

“(i) 15 percent for fiscal year 2004;
 “(ii) 25 percent for fiscal year 2005;
 “(iii) 35 percent for fiscal year 2006;
 “(iv) 45 percent for fiscal year 2007;”.

SA 3008. Mr. TALENT submitted an amendment intended to be proposed to amendment SA 2960 submitted by Mr. TALENT and intended to be proposed to the bill H.R. 4, to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes; which was ordered to lie on the table; as follows:

On page 2 of the amendment, strike lines 17 through 24, and insert the following: “least 20, but less than 24, hours per week in a month, as 0.675 of a family.

“(ii) In the case of a family in which the total number of hours in which any adult recipient or minor child head of household in

the family is participating in such work activities for an average of at least 24, but less than 33, hours per week in a month, as 0.75 of a family.”.

SA 3009. Mr. ROCKEFELLER (for himself and Mr. NELSON of Nebraska) submitted an amendment intended to be proposed to amendment SA 2947 submitted by Ms. MURKOWSKI and intended to be proposed to the bill H.R. 4, to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, and for other purposes; which was ordered to lie on the table; as follows:

At the end of the amendment, add the following:

TITLE —TEMPORARY STATE FISCAL RELIEF

Subtitle A—Extension of Temporary Increase of the Medicaid FMAP

SEC. —10. EXTENSION OF TEMPORARY INCREASE OF THE MEDICAID FMAP.

(a) IN GENERAL.—Section 401(a) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (42 U.S.C. 1396d note) is amended—

(1) in the subsection heading, by striking “\$10,000,000,000 FOR A”;

(2) in paragraph (2)—

(A) in the paragraph heading, by striking “FIRST 3 QUARTERS OF”; and

(B) by striking “the first, second, and third calendar quarters” and inserting “each calendar quarter”;

(3) by redesignating paragraphs (3) through (9) as paragraphs (4) through (10), respectively;

(4) by inserting after paragraph (2), the following:

“(3) PERMITTING MAINTENANCE OF FISCAL YEAR 2004 FMAP FOR FIRST 3 QUARTERS OF FISCAL YEAR 2005.—Subject to paragraph (6), if the FMAP determined without regard to this subsection for a State for fiscal year 2005 is less than the FMAP as so determined for fiscal year 2004, the FMAP for the State for fiscal year 2004 shall be substituted for the State’s FMAP for the first, second, and third calendar quarters of fiscal year 2005, before the application of this subsection.”;

(5) in paragraph (4) (as so redesignated)—

(A) in the paragraph heading, by striking “AND FIRST 3 CALENDAR QUARTERS OF FISCAL YEAR 2004” and inserting “, EACH CALENDAR QUARTER OF FISCAL YEAR 2004, AND FIRST 3 CALENDAR QUARTERS OF FISCAL YEAR 2005”; and

(B) by striking “and for the first, second, and third calendar quarters of fiscal year 2004, the FMAP (taking into account the application of paragraphs (1) and (2))” and inserting “, each calendar quarter of fiscal year 2004, and the first, second, and third calendar quarters of fiscal year 2005, the FMAP (taking into account the application of paragraphs (1), (2), and (3))”;

(6) in paragraph (5) (as so redesignated), by striking “ and the first, second, and third calendar quarters of fiscal year 2004” and inserting “each calendar quarter of fiscal year 2004, and the first, second, and third calendar quarters of fiscal year 2005”;

(7) in paragraph (7) (as so redesignated), by adding at the end the following:

“(D) SPECIAL RULE.—During the period that begins on July 1, 2004, and ends on June 30, 2005, subparagraphs (A) and (B) shall be applied by substituting ‘January 1, 2004’ for ‘September 2, 2003’ each place it appears.”;

(8) in paragraph (8) (as so redesignated), by striking “ and the first, second and third calendar quarters of fiscal year 2004” and inserting “each calendar quarter of fiscal year 2004, and the first, second, and third calendar quarters of fiscal year 2005”; and

(9) in paragraph (10) (as so redesignated), by striking “2004” and inserting “2005”.

(b) CONFORMING AMENDMENTS.—Section 401(a) of such Act (42 U.S.C. 1396d note) is amended—

(1) in paragraph (1), by striking “paragraph (5)” and inserting “paragraph (6)”;

(2) in paragraph (2), by striking “paragraph (5)” and inserting “paragraph (6)”;

(3) in paragraph (4) (as so redesignated), by striking “paragraphs (5), (6), and (7)” and inserting “paragraphs (6), (7), and (8)”;

(4) in paragraph (5) (as so redesignated), by striking “paragraphs (6) and (7)” and inserting “paragraphs (7) and (8)”;

(5) in paragraph (7) (as so redesignated)—

(A) by striking “paragraph (4)” each place it appears and inserting “paragraph (5)”;

(B) by striking “paragraph (3)” each place it appears and inserting “paragraph (4)”.

(c) RETROACTIVE EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if included in the enactment of section 401 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (42 U.S.C. 1396d note).

Subtitle B—Clarification of Economic Substance Doctrine and Related Penalty Provisions

SEC. —10. AMENDMENT OF 1986 CODE.

Except as otherwise expressly provided, whenever in this subtitle an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

SEC. —11. CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE.

(a) IN GENERAL.—Section 7701 is amended by redesignating subsection (n) as subsection (o) and by inserting after subsection (m) the following new subsection:

“(n) CLARIFICATION OF ECONOMIC SUBSTANCE DOCTRINE; ETC.—

“(1) GENERAL RULES.—

“(A) IN GENERAL.—In any case in which a court determines that the economic substance doctrine is relevant for purposes of this title to a transaction (or series of transactions), such transaction (or series of transactions) shall have economic substance only if the requirements of this paragraph are met.

“(B) DEFINITION OF ECONOMIC SUBSTANCE.—For purposes of subparagraph (A)—

“(i) IN GENERAL.—A transaction has economic substance only if—

“(I) the transaction changes in a meaningful way (apart from Federal tax effects) the taxpayer’s economic position, and

“(II) the taxpayer has a substantial nontax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.

In applying subclause (II), a purpose of achieving a financial accounting benefit shall not be taken into account in determining whether a transaction has a substantial nontax purpose if the origin of such financial accounting benefit is a reduction of income tax.

“(ii) SPECIAL RULE WHERE TAXPAYER RELIES ON PROFIT POTENTIAL.—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

“(I) the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

“(II) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

“(C) TREATMENT OF FEES AND FOREIGN TAXES.—Fees and other transaction expenses

and foreign taxes shall be taken into account as expenses in determining pre-tax profit under subparagraph (B)(ii).

“(2) SPECIAL RULES FOR TRANSACTIONS WITH TAX-INDIFFERENT PARTIES.—

“(A) SPECIAL RULES FOR FINANCING TRANSACTIONS.—The form of a transaction which is in substance the borrowing of money or the acquisition of financial capital directly or indirectly from a tax-indifferent party shall not be respected if the present value of the deductions to be claimed with respect to the transaction is substantially in excess of the present value of the anticipated economic returns of the person lending the money or providing the financial capital. A public offering shall be treated as a borrowing, or an acquisition of financial capital, from a tax-indifferent party if it is reasonably expected that at least 50 percent of the offering will be placed with tax-indifferent parties.

“(B) ARTIFICIAL INCOME SHIFTING AND BASIS ADJUSTMENTS.—The form of a transaction with a tax-indifferent party shall not be respected if—

“(i) it results in an allocation of income or gain to the tax-indifferent party in excess of such party’s economic income or gain, or

“(ii) it results in a basis adjustment or shifting of basis on account of overstating the income or gain of the tax-indifferent party.

“(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

“(A) ECONOMIC SUBSTANCE DOCTRINE.—The term ‘economic substance doctrine’ means the common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic substance or lacks a business purpose.

“(B) TAX-INDIFFERENT PARTY.—The term ‘tax-indifferent party’ means any person or entity not subject to tax imposed by subtitle A. A person shall be treated as a tax-indifferent party with respect to a transaction if the items taken into account with respect to the transaction have no substantial impact on such person’s liability under subtitle A.

“(C) EXCEPTION FOR PERSONAL TRANSACTIONS OF INDIVIDUALS.—In the case of an individual, this subsection shall apply only to transactions entered into in connection with a trade or business or an activity engaged in for the production of income.

“(D) TREATMENT OF LESSORS.—In applying paragraph (1)(B)(ii) to the lessor of tangible property subject to a lease—

“(i) the expected net tax benefits with respect to the leased property shall not include the benefits of—

“(I) depreciation,

“(II) any tax credit, or

“(III) any other deduction as provided in guidance by the Secretary, and

“(ii) subclause (II) of paragraph (1)(B)(ii) shall be disregarded in determining whether any of such benefits are allowable.

“(4) OTHER COMMON LAW DOCTRINES NOT AFFECTED.—Except as specifically provided in this subsection, the provisions of this subsection shall not be construed as altering or supplanting any other rule of law, and the requirements of this subsection shall be construed as being in addition to any such other rule of law.

“(5) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection. Such regulations may include exemptions from the application of this subsection.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 12. PENALTY FOR FAILING TO DISCLOSE REPORTABLE TRANSACTION.

(a) IN GENERAL.—Part I of subchapter B of chapter 68 (relating to assessable penalties) is amended by inserting after section 6707 the following new section:

“SEC. 6707A. PENALTY FOR FAILURE TO INCLUDE REPORTABLE TRANSACTION INFORMATION WITH RETURN OR STATEMENT.

“(a) IMPOSITION OF PENALTY.—Any person who fails to include on any return or statement any information with respect to a reportable transaction which is required under section 6011 to be included with such return or statement shall pay a penalty in the amount determined under subsection (b).

“(b) AMOUNT OF PENALTY.—

“(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amount of the penalty under subsection (a) shall be \$50,000.

“(2) LISTED TRANSACTION.—The amount of the penalty under subsection (a) with respect to a listed transaction shall be \$100,000.

“(3) INCREASE IN PENALTY FOR LARGE ENTITIES AND HIGH NET WORTH INDIVIDUALS.—

“(A) IN GENERAL.—In the case of a failure under subsection (a) by—

“(i) a large entity, or

“(ii) a high net worth individual,

the penalty under paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

“(B) LARGE ENTITY.—For purposes of subparagraph (A), the term ‘large entity’ means, with respect to any taxable year, a person (other than a natural person) with gross receipts in excess of \$10,000,000 for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of paragraph (2) and subparagraphs (B), (C), and (D) of paragraph (3) of section 448(c) shall apply for purposes of this subparagraph.

“(C) HIGH NET WORTH INDIVIDUAL.—For purposes of subparagraph (A), the term ‘high net worth individual’ means, with respect to a reportable transaction, a natural person whose net worth exceeds \$2,000,000 immediately before the transaction.

“(c) DEFINITIONS.—For purposes of this section—

“(1) REPORTABLE TRANSACTION.—The term ‘reportable transaction’ means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under section 6011, such transaction is of a type which the Secretary determines as having a potential for tax avoidance or evasion.

“(2) LISTED TRANSACTION.—Except as provided in regulations, the term ‘listed transaction’ means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the Secretary as a tax avoidance transaction for purposes of section 6011.

“(d) AUTHORITY TO RESCIND PENALTY.—

“(1) IN GENERAL.—The Commissioner of Internal Revenue may rescind all or any portion of any penalty imposed by this section with respect to any violation if—

“(A) the violation is with respect to a reportable transaction other than a listed transaction,

“(B) the person on whom the penalty is imposed has a history of complying with the requirements of this title,

“(C) it is shown that the violation is due to an unintentional mistake of fact;

“(D) imposing the penalty would be against equity and good conscience, and

“(E) rescinding the penalty would promote compliance with the requirements of this title and effective tax administration.

“(2) DISCRETION.—The exercise of authority under paragraph (1) shall be at the sole dis-

cretion of the Commissioner and may be delegated only to the head of the Office of Tax Shelter Analysis. The Commissioner, in the Commissioner’s sole discretion, may establish a procedure to determine if a penalty should be referred to the Commissioner or the head of such Office for a determination under paragraph (1).

“(3) NO APPEAL.—Notwithstanding any other provision of law, any determination under this subsection may not be reviewed in any administrative or judicial proceeding.

“(4) RECORDS.—If a penalty is rescinded under paragraph (1), the Commissioner shall place in the file in the Office of the Commissioner the opinion of the Commissioner or the head of the Office of Tax Shelter Analysis with respect to the determination, including—

“(A) the facts and circumstances of the transaction,

“(B) the reasons for the rescission, and

“(C) the amount of the penalty rescinded.

“(5) REPORT.—The Commissioner shall each year report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

“(A) a summary of the total number and aggregate amount of penalties imposed, and rescinded, under this section, and

“(B) a description of each penalty rescinded under this subsection and the reasons therefor.

“(e) PENALTY REPORTED TO SEC.—In the case of a person—

“(1) which is required to file periodic reports under section 13 or 15(d) of the Securities Exchange Act of 1934 or is required to be consolidated with another person for purposes of such reports, and

“(2) which—

“(A) is required to pay a penalty under this section with respect to a listed transaction,

“(B) is required to pay a penalty under section 6662A with respect to any reportable transaction at a rate prescribed under section 6662A(c), or

“(C) is required to pay a penalty under section 6662B with respect to any noneconomic substance transaction,

the requirement to pay such penalty shall be disclosed in such reports filed by such person for such periods as the Secretary shall specify. Failure to make a disclosure in accordance with the preceding sentence shall be treated as a failure to which the penalty under subsection (b)(2) applies.

“(f) COORDINATION WITH OTHER PENALTIES.—The penalty imposed by this section is in addition to any penalty imposed under this title.”.

(b) DISCLOSURE BY SECRETARY.—

(1) IN GENERAL.—Section 6103 is amended by redesignating subsection (q) as subsection (r) and by inserting after subsection (p) the following new subsection:

“(q) DISCLOSURE RELATING TO PAYMENTS OF CERTAIN PENALTIES.—Notwithstanding any other provision of this section, the Secretary shall make public the name of any person required to pay a penalty described in section 6707A(e)(2) and the amount of the penalty.”.

(2) RECORDS.—Section 6103(p)(3)(A) is amended by striking “(n)” and inserting “(n), or (q)”.

(c) CONFORMING AMENDMENT.—The table of sections for part I of subchapter B of chapter 68 is amended by inserting after the item relating to section 6707 the following:

“Sec. 6707A. Penalty for failure to include reportable transaction information with return or statement.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to returns and statements the due date for which is after the date of the enactment of this Act.

SEC. 13. ACCURACY-RELATED PENALTY FOR LISTED TRANSACTIONS AND OTHER REPORTABLE TRANSACTIONS HAVING A SIGNIFICANT TAX AVOIDANCE PURPOSE.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662 the following new section:

“SEC. 6662A. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERSTATEMENTS WITH RESPECT TO REPORTABLE TRANSACTIONS.

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a reportable transaction understatement for any taxable year, there shall be added to the tax an amount equal to 20 percent of the amount of such understatement.

“(b) REPORTABLE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘reportable transaction understatement’ means the sum of—

“(A) the product of—

“(i) the amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer’s treatment of such item (as shown on the taxpayer’s return of tax), and

“(ii) the highest rate of tax imposed by section 1 (section 11 in the case of a taxpayer which is a corporation), and

“(B) the amount of the decrease (if any) in the aggregate amount of credits determined under subtitle A which results from a difference between the taxpayer’s treatment of an item to which this section applies (as shown on the taxpayer’s return of tax) and the proper tax treatment of such item.

For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for such year, and any reduction in the amount of capital losses which would (without regard to section 1211) be allowed for such year, shall be treated as an increase in taxable income.

“(2) ITEMS TO WHICH SECTION APPLIES.—This section shall apply to any item which is attributable to—

“(A) any listed transaction, and

“(B) any reportable transaction (other than a listed transaction) if a significant purpose of such transaction is the avoidance or evasion of Federal income tax.

“(c) HIGHER PENALTY FOR NONDISCLOSED LISTED AND OTHER AVOIDANCE TRANSACTIONS.—

“(1) IN GENERAL.—Subsection (a) shall be applied by substituting ‘30 percent’ for ‘20 percent’ with respect to the portion of any reportable transaction understatement with respect to which the requirement of section 6664(d)(2)(A) is not met.

“(2) RULES APPLICABLE TO ASSERTION AND COMPROMISE OF PENALTY.—

“(A) IN GENERAL.—Only upon the approval by the Chief Counsel for the Internal Revenue Service or the Chief Counsel’s delegate at the national office of the Internal Revenue Service may a penalty to which paragraph (1) applies be included in a 1st letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Internal Revenue Service Office of Appeals. If such a letter is provided to the taxpayer, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(B) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of subparagraph (A).

“(d) DEFINITIONS OF REPORTABLE AND LISTED TRANSACTIONS.—For purposes of this section, the terms ‘reportable transaction’ and ‘listed transaction’ have the respective meanings given to such terms by section 6707A(c).

“(e) SPECIAL RULES.—

“(1) COORDINATION WITH PENALTIES, ETC., ON OTHER UNDERSTATEMENTS.—In the case of an understatement (as defined in section 6662(d)(2))—

“(A) the amount of such understatement (determined without regard to this paragraph) shall be increased by the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements for purposes of determining whether such understatement is a substantial understatement under section 6662(d)(1), and

“(B) the addition to tax under section 6662(a) shall apply only to the excess of the amount of the substantial understatement (if any) after the application of subparagraph (A) over the aggregate amount of reportable transaction understatements and noneconomic substance transaction understatements.

“(2) COORDINATION WITH OTHER PENALTIES.—

“(A) APPLICATION OF FRAUD PENALTY.—References to an underpayment in section 6663 shall be treated as including references to a reportable transaction understatement and a noneconomic substance transaction understatement.

“(B) NO DOUBLE PENALTY.—This section shall not apply to any portion of an understatement on which a penalty is imposed under section 6662B or 6663.

“(3) SPECIAL RULE FOR AMENDED RETURNS.—Except as provided in regulations, in no event shall any tax treatment included with an amendment or supplement to a return of tax be taken into account in determining the amount of any reportable transaction understatement or noneconomic substance transaction understatement if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted by the Secretary regarding the examination of the return or such other date as is specified by the Secretary.

“(4) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this subsection, the term ‘noneconomic substance transaction understatement’ has the meaning given such term by section 6662B(c).

“(5) CROSS REFERENCE.—

“For reporting of section 6662A(c) penalty to the Securities and Exchange Commission, see section 6707A(e).”

(b) DETERMINATION OF OTHER UNDERSTATEMENTS.—Subparagraph (A) of section 6662(d)(2) is amended by adding at the end the following flush sentence:

“The excess under the preceding sentence shall be determined without regard to items to which section 6662A applies and without regard to items with respect to which a penalty is imposed by section 6662B.”

(c) REASONABLE CAUSE EXCEPTION.—

(1) IN GENERAL.—Section 6664 is amended by adding at the end the following new subsection:

“(d) REASONABLE CAUSE EXCEPTION FOR REPORTABLE TRANSACTION UNDERSTATEMENTS.—

“(1) IN GENERAL.—No penalty shall be imposed under section 6662A with respect to any portion of a reportable transaction understatement if it is shown that there was a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

“(2) SPECIAL RULES.—Paragraph (1) shall not apply to any reportable transaction understatement unless—

“(A) the relevant facts affecting the tax treatment of the item are adequately disclosed in accordance with the regulations prescribed under section 6011,

“(B) there is or was substantial authority for such treatment, and

“(C) the taxpayer reasonably believed that such treatment was more likely than not the proper treatment.

A taxpayer failing to adequately disclose in accordance with section 6011 shall be treated as meeting the requirements of subparagraph (A) if the penalty for such failure was rescinded under section 6707A(d).

“(3) RULES RELATING TO REASONABLE BELIEF.—For purposes of paragraph (2)(C)—

“(A) IN GENERAL.—A taxpayer shall be treated as having a reasonable belief with respect to the tax treatment of an item only if such belief—

“(i) is based on the facts and law that exist at the time the return of tax which includes such tax treatment is filed, and

“(ii) relates solely to the taxpayer’s chances of success on the merits of such treatment and does not take into account the possibility that a return will not be audited, such treatment will not be raised on audit, or such treatment will be resolved through settlement if it is raised.

“(B) CERTAIN OPINIONS MAY NOT BE RELIED UPON.—

“(i) IN GENERAL.—An opinion of a tax advisor may not be relied upon to establish the reasonable belief of a taxpayer if—

“(I) the tax advisor is described in clause (ii), or

“(II) the opinion is described in clause (iii).

“(ii) DISQUALIFIED TAX ADVISORS.—A tax advisor is described in this clause if the tax advisor—

“(I) is a material advisor (within the meaning of section 6111(b)(1)) who participates in the organization, management, promotion, or sale of the transaction or who is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates,

“(II) is compensated directly or indirectly by a material advisor with respect to the transaction,

“(III) has a fee arrangement with respect to the transaction which is contingent on all or part of the intended tax benefits from the transaction being sustained,

“(IV) has an arrangement with respect to the transaction which provides that contractual disputes between the taxpayer and the advisor are to be settled by arbitration or which limits damages by reference to fees paid to the advisor for such transaction, or

“(V) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

“(iii) DISQUALIFIED OPINIONS.—For purposes of clause (i), an opinion is disqualified if the opinion—

“(I) is based on unreasonable factual or legal assumptions (including assumptions as to future events),

“(II) unreasonably relies on representations, statements, findings, or agreements of the taxpayer or any other person,

“(III) does not identify and consider all relevant facts,

“(IV) is not signed by all individuals who are principal authors of the opinion, or

“(V) fails to meet any other requirement as the Secretary may prescribe.”

(2) CONFORMING AMENDMENT.—The heading for subsection (c) of section 6664 is amended by inserting “FOR UNDERPAYMENTS” after “EXCEPTION”.

(d) CONFORMING AMENDMENTS.—

(1) Subparagraph (C) of section 461(i)(3) is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(2) Paragraph (3) of section 1274(b) is amended—

(A) by striking “(as defined in section 6662(d)(2)(C)(iii))” in subparagraph (B)(i), and

(B) by adding at the end the following new subparagraph:

“(C) TAX SHELTER.—For purposes of subparagraph (B), the term ‘tax shelter’ means—

“(i) a partnership or other entity,

“(ii) any investment plan or arrangement,

or

“(iii) any other plan or arrangement,

if a significant purpose of such partnership, entity, plan, or arrangement is the avoidance or evasion of Federal income tax.”

(3) Section 6662(d)(2) is amended by striking subparagraphs (C) and (D).

(4) Section 6664(c)(1) is amended by striking “this part” and inserting “section 6662 or 6663”.

(5) Subsection (b) of section 7525 is amended by striking “section 6662(d)(2)(C)(iii)” and inserting “section 1274(b)(3)(C)”.

(6)(A) The heading for section 6662 is amended to read as follows:

“SEC. 6662. IMPOSITION OF ACCURACY-RELATED PENALTY ON UNDERPAYMENTS.”

(B) The table of sections for part II of subchapter A of chapter 68 is amended by striking the item relating to section 6662 and inserting the following new items:

“Sec. 6662. Imposition of accuracy-related penalty on underpayments.

“Sec. 6662A. Imposition of accuracy-related penalty on understatements with respect to reportable transactions.”

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

SEC. 14. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) IN GENERAL.—Subchapter A of chapter 68 is amended by inserting after section 6662A the following new section:

“SEC. 6662B. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

“(a) IMPOSITION OF PENALTY.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

“(b) REDUCTION OF PENALTY FOR DISCLOSED TRANSACTIONS.—Subsection (a) shall be applied by substituting ‘20 percent’ for ‘40 percent’ with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

“(c) NONECONOMIC SUBSTANCE TRANSACTION UNDERSTATEMENT.—For purposes of this section—

“(1) IN GENERAL.—The term ‘noneconomic substance transaction understatement’ means any amount which would be an understatement under section 6662A(b)(1) if section 6662A were applied by taking into account items attributable to noneconomic substance transactions rather than items to which section 6662A would apply without regard to this paragraph.

“(2) NONECONOMIC SUBSTANCE TRANSACTION.—The term ‘noneconomic substance transaction’ means any transaction if—

“(A) there is a lack of economic substance (within the meaning of section 7701(n)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected under section 7701(n)(2), or

“(B) the transaction fails to meet the requirements of any similar rule of law.

“(d) RULES APPLICABLE TO COMPROMISE OF PENALTY.—

“(1) IN GENERAL.—If the 1st letter of proposed deficiency which allows the taxpayer

an opportunity for administrative review in the Internal Revenue Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

“(2) APPLICABLE RULES.—The rules of paragraphs (2), (3), (4), and (5) of section 6707A(d) shall apply for purposes of paragraph (1).

“(e) COORDINATION WITH OTHER PENALTIES.—Except as otherwise provided in this part, the penalty imposed by this section shall be in addition to any other penalty imposed by this title.

“(f) CROSS REFERENCES.—

“(1) For coordination of penalty with understatements under section 6662 and other special rules, see section 6662A(e).

“(2) For reporting of penalty imposed under this section to the Securities and Exchange Commission, see section 6707A(e).”.

(b) CLERICAL AMENDMENT.—The table of sections for part II of subchapter A of chapter 68 is amended by inserting after the item relating to section 6662A the following new item:

“Sec. 6662B. Penalty for understatements attributable to transactions lacking economic substance, etc.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, April 21st, at 2:30 p.m. in room SD-366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on implementation of the Recreation Fee Demonstration Program by the Forest Service and Bureau of Land Management, and on policies related to the program.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150.

For further information, please contact Frank Gladics at 202-224-2878.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on April 1, 2004, at 9:30 a.m., in open and closed session to receive testimony for Unified and Regional Commanders on their military strategy and operational requirements, in review of the Defense Authorization Request for fiscal year 2005.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Thursday, April 1, 2004, at 2 p.m. to mark up an original bill entitled “The Federal Housing Enterprise Regulatory Reform Act of 2004.”

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Thursday, April 1, 2004, off the Senate floor on pending Committee business.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, April 1, 2004, at 9:30 a.m. to hold a hearing on Economic Treaties.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a markup on Thursday, April 1, 2004, at 9:30 a.m. in Dirksen Senate Building room 226.

Agenda:

I. Nominations: Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit; Peter W. Hall to be U.S. Circuit Judge for the Second Circuit; William Gerry Myers III to be U.S. Circuit Judge for the Ninth Circuit; Roger T. Benitez to be U.S. District Judge for the Southern District of California; Jane J. Boyle to be U.S. District Judge for the Northern District of Texas; Marcia G. Cooke to be U.S. District Judge for the Southern District of Florida; Paul S. Diamond to be U.S. District Judge for the Eastern District of Pennsylvania; Walter D. Kelley, Jr. to be U.S. District Judge for the Eastern District of Virginia; and Matthew G. Whitaker to be U.S. Attorney for the Southern District of Iowa.

II. Bills: S. 1735—Gang Prevention and Effective Deterrence Act of 2003 [Hatch, Chambliss, Cornyn, Feinstein, Graham, Grassley, Schumer].

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON VETERANS' AFFAIRS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Thursday, April 1, 2004, for a hearing to consider the nominations of

Robert N. Davis, to be Judge, U.S. Court of Appeals for Veterans' Claims, and Pamela M. Iovino, to be Assistant Secretary of Veterans Affairs for Congressional Affairs.

The hearing will take place in room 418 of the Russell Senate Office Building at 2:30 p.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON CLEAN AIR, CLIMATE CHANGE AND NUCLEAR SAFETY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Clean Air, Climate Change, and Nuclear Safety be authorized to meet on Thursday, April 1 at 9:30 a.m. to conduct an oversight hearing on the implementation of the National Ambient Air Quality Standards for Particulate Matter and Ozone.

The meeting will be held in SD 406.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Committee on the Judiciary Subcommittee on Immigration and Border Security be authorized to meet to conduct a hearing On “Securing Our Borders Under a Temporary Guest Worker Proposal” on Thursday, April 1, 2004, at 2:30 p.m. in SD226.

Panel 1: The Honorable Robert Bonner, Commissioner, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC; The Honorable Stewart Verdery, Assistant Secretary for Policy, Border and Transportation Security Directorate, Department of Homeland Security, Washington, DC; and Director Donna Buccella, Terrorist Screening Center, Federal Bureau of Investigations, Department of Justice, Washington, DC.

Panel II: Daniel Griswold, Associate Director for Trade Policy Studies, Cato Institute, Washington, DC and Margaret D. Stock, Associate Professor, U.S. Military Academy, West Point, NY.

THE PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Readiness and Management support of the Committee on Armed Services be authorized to meet during the session of the Senate on April 1, 2004, at 2:30 p.m., in open session to receive testimony on military installation programs in review of the Defense authorization request for fiscal year 2005.

THE PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

MR. GRASSLEY. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology and Space be authorized to meet on Thursday, April 1, 2004, at 2:30 p.m., on NASA FY05 Budget, in SR-253.